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THE ARBITRATION TREATIES

AN EXAMINATION OF THE MAJORITY REPORT OF THE SENATE COMMITTEE ON FOREIGN RELATIONS

BY

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29A BEACON STREET, BOSTON

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WORLD PEACE FOUNDATION
29A Beacon Street - - - - - - Boston, Mass.

THE ARBITRATION TREATIES

An Examination of the Majority Report of the Senate Committee on Foreign Relations, in an Address before the World Peace Foundation, Massachusetts Peace Society and Twentieth Century Club, at Boston, December 14, 1911

BY

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The dream of philanthropists, to get rid of war, has almost in a day become the problem of statesmen. What has worked this miracle? Not that war is unnecessary, foolish, wasteful, brutalizing, and wicked, not that "war is hell," but it is becoming too expensive. Modern improvements in the art of butchery and destruction have made it so costly that more than one national exchequer is breaking down under the mere attempt to maintain a state of preparation for it. Statesmen have to take notice of this, and even pseudo-statesmen more or less reluctantly admit that something must be done about it.

This motive, with the advancing moral sentiment of the world, has given the cause of international arbitration an impetus which the most confident opponent of war would not have predicted at the beginning of the twentieth century. The pending treaties of the United States with Great Britain and France are so far in advance of any previous achievement that their importance, not only to our own country and to the other powers concerned but to the cause of civilization throughout the world, can hardly be overestimated. If ratified, they will mark an epoch in the history of international relations, and indeed in the history of mankind, as a beginning of the practical abolition of war.

The Hague Convention of 1907 does not bind any nation by direct agreement to arbitrate any controversy. In our treaties of 1908 with Great Britain and France we agreed to arbitrate all differences of a legal nature or relating to the interpretation of treaties, but with the large exception of such as affect "the vital interests, the independence

or the honor," of the parties, or the interests of others. This left undone the vital thing, which is to bring this most difficult and disturbing class of questions into agreed arbitration and put them beyond the hazard of war.

Early in the present year President Taft, with a courage and elevation of purpose that will remain his highest title to distinction, made overtures to Great Britain and France respectively toward a treaty of arbitration as nearly universal as the present state of public sentiment and human development is supposed to permit. The response was immediate and cordial. The position taken by the President, and the remarkable speech of the British Foreign Secretary in the House of Commons, attracted and fixed the attention of the world upon this undertaking of three of the greatest nations to make a real beginning at the abolition of war, and all civilized mankind has been watching the mighty experiment with eager interest and the most anxious hope for its success. All the auspices appeared favorable. In August the treaties were signed and laid before the Senate for its consent, when the first discordant note was sounded by a majority of the Committee on Foreign Relations, recommending that the vital clause be stricken from the treaties.

To understand the real issue presented by this action of the committee, it is necessary to know what the treaties undertake to do. The two are in substantially the same terms, and may be considered together. The clause of Article I defining the scope of each treaty is as follows:—

"All differences hereafter arising between the High Contracting Parties, which it has not been possible to adjust by diplomacy, relating to international matters in which the High Contracting Parties are concerned by virtue of a claim of right made by one against the other under treaty or otherwise, and which are justiciable in their nature by reason of being susceptible of decision by the application of the principles of law or equity, shall be submitted to the Permanent Court of Arbitration established at The Hague by the Convention of October 18, 1907, or to some other arbitral tribunal, as may be decided in each case by special agreement."

The great advance beyond the treaties of 1908 is in bringing questions of the "national honor" class within the scope of agreed arbitration. The substance of the agreement is that all differences, of whatever character, arising by virtue of a claim of right, if justiciable in their nature, shall be arbitrated. Another new and important provision, adopted from the Hague Convention, is that upon request

of either party any controversy may be sent to a Joint Commission of Inquiry for investigation and recommendation, with an interval of a year's time, if desired; thus securing deliberation, a judicial finding of the facts, and the advice of a tribunal of high character, as a safeguard against public clamor and the danger of sudden war in hot blood.

The vital working feature remains, the feature that makes each treaty a real and effective compact of peace. Recognizing that the question of what is a justiciable or arbitrable case may be subject to difference of opinion, and that the treaty may go for naught and its benefits be lost if arbitration can be defeated because of such difference, it is further provided that, if the parties disagree as to whether a particular case is within the scope of the treaty as a proper subject of arbitration, this question shall be submitted to the Joint Commission of Inquiry, and, if that body finds that the case is within the treaty description, it shall go to arbitration. This is the final clause of Article III, which is in these terms:—

"It is further agreed, however, that in cases in which the Parties disagree as to whether or not a difference is subject to arbitration under Article I of this Treaty, that question shall be submitted to the Joint High Commission of Inquiry; and if all or all but one of the members of the Commission agree and report that such difference is within the scope of Article I, it shall be referred to arbitration in accordance with the provisions of this Treaty."

This is the crucial point. It is this feature that makes the treaties significant beyond any others ever concluded between nations, for this, and this alone, ensures the arbitration of every justiciable case. This clause is stricken out by the majority of the committee in reporting the treaties to the Senate. The report encountered at the threshold the formidable dissent of Senators Root and Burton with the Chairman, who favor the treaties as they are, and with whom Senators McCumber and Sutherland are now aligned, but it prevented immediate ratification and will destroy, if it prevails, the moral effect and the practical value of the movement of which these treaties are the culmination. It has gone out to the world that the treaties are held up in the American Senate, and this is liable to be taken abroad as representing the sentiment of the country. The President appeals from the committee to the people, and it becomes their duty to acquaint themselves with the reasons by which it is sought to justify this action of the majority, that they

may bring to bear upon the situation the controlling force of an enlightened public opinion.

It is apparent on the face of the report—indeed, the majority make no attempt to conceal it—that their objection to the treaties is wholly because of the supposed invasion of the prerogatives of the Senate. But they appear to fall into the singular error of taking the final clause of Article III, which they would strike out, as meaning that, if the Joint Commission of Inquiry finds a case to be within the treaty, it must then go to arbitration, without any power remaining in the Senate to interfere or prevent it.

It might not be an unmixed misfortune if it were so, but such is not the treaty. Senator Burton makes this clear in his dissenting statement, and, if anything can be wanting to his demonstration, Secretary Knox, in his address at Cincinnati, has supplied it. If the Commission finds a case to be within the treaty, then, by the express terms of this clause, "it shall be referred to arbitration *in accordance with the provisions of this Treaty*." By the provisions of the treaty, in Article I, no case goes to arbitration until the details are first settled by a special agreement, to be made on our part by and with the advice and consent of the Senate. According to the plain language, and for all the reasons of the case, this provision operates as fully when the Commission has found a difference to be arbitrable as it does when the parties have agreed at the outset that it is arbitrable. In either event the same procedure follows, of which the special agreement is a part. As this is subject to the consent of the Senate, that body has the same power over the arbitration in the one case as in the other.

It may be possible that the attack of the majority upon Article III was wholly due to this mistaken conception of its effect upon the senatorial prerogatives. But when their position is examined sufficiently to see what they are really contending for, this will appear unlikely, for a reason which must be noticed.

While the *power* of the Senate to interfere and stop an arbitration after the Joint Commission has found the case to be arbitrable is as clear and unquestionable as its power to prevent the arbitration of any other case by declaring it not properly arbitrable, the actual situation of the Senate in the respective cases is quite different. When the Commission has found a case to be within the treaty, arbitration would follow as of course, subject only to the power of the Senate to block it by refusing its consent to the spe-

cial agreement. Under ordinary circumstances the Senate would not be justified to the country, and much less to the adverse party, in thus defeating an arbitration at this stage, as this would properly be regarded as a breach of the faith of the treaty. But if any miscarriage of the Executive, or of a Commission, should ever imperil the national interests,—a case wholly unlikely to occur,— this power could be exercised, and it would be ample for the emergency. The Senate could stop the proceedings, and, if done to avert a real national peril, undoubtedly the country would sustain the act.

On the other hand, if the final clause of Article III is stricken from the treaties as the majority recommend, the Senate retains not only the power but the unqualified right to prevent arbitration, in any case and so in all cases, if it chooses to say that the case is not properly arbitrable. It is plain, therefore, that the majority stand not merely for an emergency power to prevent an arbitration, which the Senate will retain in any event, but a power which they can exercise freely and at their pleasure, without being open to the charge of bad faith. In short, they stand not merely for the power, but for the moral and political right, to prevent arbitration in any case if they see fit, keeping the whole subject at all times within their own control.

This would continue in perpetuity the very state of things that arbitration is designed to put an end to, and is principally valuable for putting an end to. The highest service of arbitration is to place a cause of international offence where statesmen cannot play politics with it, nor an excited populace foment it into sudden war. The issue thus presented by the majority report should be so clearly understood that there can be no mistake about it. The most hardened advocate of war must be satisfied with the report, and might have written it. If the treaties are so amended, they are destroyed for the purposes of any case in which a third of the Senate is, for any reason, disinclined to arbitration. If the Senate follows the lead of the committee, it is notice to the world that an effective treaty of general arbitration with the United States is impossible.

The majority could not openly concede that they are dealing the treaties a fatal blow for no better reason than solicitude for their own privileges. They must find some other reason. Accordingly, they do not stop with the mere objection that the treaties deprive the Senate of its control over arbitration. They plant themselves upon the Constitution, and say that the reference to a Commission of the question whether a difference is within the scope of the treaty amounts

to an unconstitutional delegation of the treaty-making power of the Senate.

This is important, if true. But the question to be referred relates to interpretation of the treaty. In the treaties of 1908 we agreed to arbitrate all questions "relating to the interpretation of treaties," except such as fall into the national honor class, and nothing was heard about the Constitution.

Probably we should all agree, however, that if the treaties involve the surrender of any constitutional power of the Senate or its delegation to an international commission in violation of the Constitution, they ought not to be ratified in that form. The most eminent constitutional authority in the committee, and some of the most eminent in the country, have expressed opinions against this view of the majority. It will not be difficult to show, if there is any need of showing, that these opinions are correct and the ground taken by the majority untenable.

What is the treaty-making power of the Senate? It is conferred, in a dozen words, by Section 2 of Article II of the Constitution. The President "shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur." The advisory function is only incidental to the consenting power, which is the real power conferred.

We might stop with this statement, for the fallacy of the majority report is apparent on the face of it. Does the treaty vest in the Commission or divest from the Senate any part of the power of the Senate to consent or refuse its consent to a treaty? Clearly it does not.

There is another short answer to the constitutional objection. Probably no one would suppose it to be an unconstitutional delegation of the power of the Senate to submit a particular case to arbitration on the express condition that the arbitral tribunal finds it to be a justiciable claim of right, capable of decision by principles of law or equity. These or essentially similar conditions must necessarily be implied, if not expressed, in many treaties of arbitration. The principle involved in the pending treaties is precisely the same. If the one instance is not unconstitutional, the other cannot be.

But let us examine the supposed constitutional question a little more closely. The consenting power of the Senate necessarily carries

with it the right or privilege of passing upon every question, of fact or law, involved in any case. The Senate could have rejected, from the beginning, every treaty of arbitration, and insisted that no difference with any foreign power should be adjusted save by a direct agreement of settlement, after every question involved had been examined and determined by the Senate itself. Of course, the Senate has never taken this position. On the contrary, it has almost from the adoption of the Constitution been accustomed to consent to treaties of arbitration, and has throughout that long period consented to a large number of them.

How do the pending treaties differ from other treaties of arbitration to which the Senate has consented? So far as this question is concerned, they differ only by the single provision that, if the powers do not agree as to whether a particular difference is within the treaty description of arbitrable cases, this question may be referred to and decided by an international Commission.

This is a mixed question of fact and law, involving, first, a knowledge of the facts of the case, second, such construction of the treaty, if any, as may be necessary to determine whether the case is within it. But in every arbitration the tribunal is empowered to find the facts, so far as they are in dispute, and it necessarily has power to construe the treaty or agreement, not only to determine whether the case presented is within it, but for all other purposes essential to the decision. Otherwise, it could make no decision.

The only real difference, then, between these treaties and previous treaties of arbitration is that this particular question, whether a case is within the scope of a treaty, may not heretofore have been submitted to arbitration *by itself*. Is there anything in the Constitution which forbids this to be done, or makes it a delegation of the treaty-making power of the Senate?

There are no express limitations on the treaty-making power. Clearly there can be no implied limitation which would exclude treaties of arbitration. A sovereign nation has inherent power to make any sort of treaty, and the whole treaty-making power of the United States is vested in the President with the consent of the Senate. Nor was it ever supposed that there is any implied limitation upon the number or character of questions that may be submitted to arbitration, or the time or order or manner of submission. The power has always been taken to include, and does without doubt include, every phase and particular of the adjustment of every in-

ternational dispute, each and every one of which may be dealt with in any manner to which the treaty powers agree. All this has been assumed without question, and is now historically settled.

The power of the Senate to decide for itself the question whether a particular case is a proper subject of arbitration is only a part of the same power that authorizes it to decide for itself any or every other question, of fact or of law, involved in any case, before consenting to a treaty. If it is an unconstitutional delegation of its power to leave this question to a Commission, it is equally so to leave any other disputed question to a Commission. If the Constitution requires that this question be determined by the Senate, it requires equally that every other disputed question be determined by the Senate, and all arbitration is, and has always been, a delegation of the power of the Senate and unconstitutional.

Nobody would believe this, nor is there any reason for believing it. While the Constitution *empowers* the Senate to determine every question for itself if it sees fit, nobody has ever supposed that the Constitution *requires* the Senate to determine every question, or any particular question, or any particular class of questions. The reference of this question is as plainly an exercise of the treaty-making power, and as constitutional an exercise of it, as the reference of any other question to arbitration or negotiation.

To delegate its constitutional power of consenting or refusing its consent to a treaty, which the Senate cannot do if it would, is one thing. To waive the exercise of a right or privilege possessed by virtue of the treaty-making power, which it can do and does in every treaty of arbitration, is quite a different thing. The government properly waives its right to make war whenever it concludes a treaty of peace, but it does not and cannot surrender or delegate its power to make war. The majority of the committee appear to overlook this distinction.

There is hardly need of resort to judicial authority upon so plain a question, but this is nothing new or unfamiliar. It was long ago judicially settled that it is not a delegation of legislative power for a law to leave to a public board or officer a question upon which its application or operation may depend. For a cogent example, the Supreme Court of the United States has held that it is not unconstitutional as an exercise of legislative or treaty-making powers for the President to decide, as under treaties or Acts of Congress he may, whether a foreign country is within the scope of a tariff act

or reciprocity treaty. Similar illustrations might be multiplied without limit. The question left by the pending treaties to the Joint Commission, whether a particular case is within the scope of the treaty, is precisely such a question.

The conclusion is unavoidable that the treaties involve no delegation of the power of the Senate and no infringement of the Constitution. And we have already seen that they do not deprive the Senate of its power over any arbitration, unconstitutionally or otherwise. As each ground fails upon which the majority profess to stand (for they protest much against official pride of position or privilege as any part of their motive to opposition), it ought to be enough to stop here.

But they nevertheless say, and urge the objection at great length, that, even if not unconstitutional, it would be "most unwise and most perilous" to so far deprive the Senate of its power, as they call it, as to allow the question whether a difference is within the scope of the treaty to be referred to and decided by a Commission. We have seen that the Senate is not deprived of any part of its power, but, if the treaties are for any reason unwise or perilous, this ought to be known.

The majority assign some reasons why this reference would in their view be unwise and perilous. They say that the description of the questions embraced by the treaties is novel, and is very large, general, and indeterminate; that nobody knows exactly what "justiciable" means, or what "equity" is, and "under these circumstances to vest in an outside Commission the power to say finally what the treaty means by its very general and indefinite language is to vest in that Commission the power to make for us an entirely different treaty from that which we supposed ourselves to be making." This, again, is important if true, and as it is calculated to excite opposition to the treaties, it calls for examination.

The President and Secretary of State have answered for themselves, politely but effectually, the intimation that they did not know what they were about, and acted so unwisely as to put the national interests in peril, in negotiating the treaties. It is indeed novel, as the report says, to bring questions of the national honor class within the scope of agreed arbitration. It is the greatest advance ever made at one step in the history of international relations, and it has taken more than a hundred years of arbitration to bring the system to this point of development. But, so far from an objection to the treaties, this

is generally and justly regarded as their highest claim to the favor of the parties and of the world.

The treaties do not appear to be especially difficult or doubtful of meaning. As treaties go, they are short and clear. They can be made to appear doubtful, as any written instrument can be, or they can be read plainly. It is inaccurate and misleading to say that Article III leaves to the Commission "the power to say finally what the treaty means," or "the power to make for us an entirely different treaty." It leaves to the Commission the power to find, upon judicial inquiry, whether a particular case is within the treaty description of arbitrable cases, and nothing more. The word "justiciable" which troubles the majority, so far from being left doubtful is defined, in plain words. A case is justiciable if it can be decided by the principles of law or equity. The "law" in question is a reasonably well-established science, not unfamiliar to those having to deal with it. "Equity" is a broader term, but it would not seem to be embarrassing. The majority take it, and are probably justified in taking it, to mean "that which is equally right or just to all concerned; as the application of the dictates of good conscience to the settlement of controversies." Do they regard equity, thus defined, as objectionable? It may appear to some minds unfortunate that such principles as these should be applied to the settlement of international disputes, but this is commonly understood to be the very purpose of arbitration.

It is to be remembered that, whenever the powers are not agreed that a case is arbitrable, either party may bring it before the Commission for previous examination,—"for impartial and conscientious investigation" are the words,—so that the question of arbitrability may always be decided upon full knowledge of the case, in the light of all facts and arguments that can be brought to bear upon it. Have we anything to fear from this? Is there any reason why the United States cannot afford to come into this agreement if Great Britain and France or other foreign powers can afford to come into it?

By way of answer to this question the majority refer to territory, immigration, and the Monroe Doctrine as subjects which ought never to be submitted to arbitration,—subjects, indeed, which "no nation could submit to an outside judgment without abdicating its sovereignty and independence," but which, they say, are liable to be forced upon us under these treaties, if ratified. Perhaps we ought to assume that the majority present this argument in good faith. Otherwise, it would appear to be dragged in for the purpose of diverting

attention from the real issue to one which may excite public apprehension and help to defeat the treaties. It really need not be discussed, for, as Senator Root points out, all such apprehensions can be foreclosed by a stroke of the pen in the act of ratification, without touching the text of the treaty. Even this ought not to be done. The treaties are plain enough without it. It may have to be done, as a concession to prejudice or misunderstanding, and, if done, it disposes of this argument.

But passing this, and passing the questionable expediency of casting out in advance of the treaties the unnecessary invitation to do what probably no foreign power would ever think of doing but for the notice that it may be expected, what is to be apprehended in this direction? The treaties do not extend to matters wholly of governmental policy. This would seem to be plain enough on the face of them. Secretary Knox, at Cincinnati, has added his demonstration to that of the dissenting senators, explaining that the treaties were drawn with special care to exclude such questions, in deference to the supposed unwillingness of the Senate to allow them to be brought within the scope of arbitration. We have seen that an arbitrable case must be one in which each party has a legitimate concern, that it must stand upon a claim of right based upon a treaty or some other recognized international obligation, and must be capable of decision by principles of law or equity. This description cannot be applied to immigration, or to the Monroe Doctrine. As to this, the case is so clear that the British Foreign Secretary has publicly avowed his opinion that the treaty has nothing to do with the Monroe Doctrine.

Take immigration. It lies at the foundation of international law that no nation has or can claim a right to introduce its inhabitants into another country against the will of the latter, and no nation is bound to receive them. This is a policy which every nation may determine for itself, unquestioned by any other. These treaties can have no concern with it, unless such a question should arise under some other treaty provision, in which event probably every one would agree that it is a proper subject of arbitration.

Take the Monroe Doctrine. A good deal might be said, if the occasion required, about this ancient fetich, but it is unnecessary. This, too, has nothing to do with claims of right and is not adjudicable by principles of law or equity. If anything, it is a political policy of our government, resting solely in our own will and our power

to enforce it. It is not a subject of international obligation, or of claims of right by foreign powers, and the principles of law or equity cannot be so applied to it as to make it justiciable under these treaties.

There are men of enlightened judgment who think that even such subjects as these should be and eventually may be brought within the scope of international arbitration. The President himself has openly avowed this opinion. The system will never be complete until it has become as impossible for a strong nation to stand upon its power, regardless of right, as for a strong man to bully and overreach his weaker neighbor. It is enough at present to say that the treaties exclude such subjects. Claims of right, resting in recognized international obligation and capable of decision by the principles of law or equity, cannot arise out of them.

Something more may be said about territory. On this subject the majority sound an alarm to the states, declaring that the very soil under their feet may be involved. "The rights of each state and of the United States to their territory," it is said, "might be forced to arbitration." Do these gentlemen really believe, or do they expect anybody else to believe, that any foreign power can or ever will claim, as of right, the territory of any state, or, if claimed, that any foreign power could prove title to it upon principles of law or equity? Such an appeal to the galleries would seem out of place here. Questions of territory are familiar subjects of arbitration. Every question of boundary is a question of territory. We began to arbitrate such questions almost as long ago as the Jay Treaty of 1795. In the forties we surrendered to Great Britain a considerable territory claimed by Maine and Massachusetts, and the settlement was received with general approval even in the states directly concerned. A few years later the country rang with the Oregon boundary cry of "fifty-four forty or fight," but there was no fifty-four forty, and there was no fight. We peaceably and sensibly accepted much less than we claimed. Great Britain, perhaps the most confident and aggressive of all the powers, has repeatedly done the same thing. It is little better than nonsense to say that arbitration of a claim of right to disputed territory, capable of decision by the principles of law or equity, involves "abandonment of our sovereignty and independence." Have we any territory to which any such claim can be asserted? If so, where is it? We have the territory of the Filipinos, which, as many think, belongs to them, but we are not now making a treaty with the Fili-

pinos, nor can they come into the treaty-making family without our consent. Is it the Panama Canal zone? It is possible that our title to that could be impeached, and, if so, the sooner the better, that it may be made good. What would be thought of a man in possession of land claimed as of right by his neighbor, who defies the law and insists on keeping possession by force, if he can? Do we desire to take that lawless attitude toward the nations, or do we need to? Are there any such claims, anywhere, and is it desired, taking advantage of our strength, to suppress them by menace of superior force, and is this the reason why we will not agree in advance to arbitrate them?

It would seem, if the majority really feel the apprehensions they express that the treaties may let in upon us any claims of the non-justiciable classes, that they would have accepted the suggestion of the dissenting senators to exclude them, once for all, by reservation in ratifying the treaty, without mutilating the text. They can hardly complain if the turning of their backs upon this simple, inoffensive, and effective method of quieting these fears, and insisting, instead, on cutting out the heart of the treaties, is taken as evidence of a purpose to destroy rather than to perfect them.

The majority assert that the Joint High Commission, which is to decide whether a case is within the scope of the treaty, may be composed of but one person, or may be composed wholly of foreigners. This is contrary to the universal understanding outside of the committee, and is incorrect; and, while it may not be worth extended discussion, it is addressed to the Senate for the purpose of influencing its action and is calculated to prejudice the treaties, as the whole controversy arises over the functions of this Commission. Article II establishing the Joint High Commission of Inquiry provides that:—

"whenever a question or matter of difference is referred to the Joint High Commission of Inquiry, each of the High Contracting Parties shall designate three of its nationals to act as members of the Commission of Inquiry for the purposes of such reference; or the Commission may be otherwise constituted in any particular case by the terms of the reference."

The only ground for the majority statement is in the last clause of this paragraph. Passing the imputation upon any occupant of the presidential office that, even if it be as they say, he would go out of his way and out of the ordinary course of the treaty to agree to a Commission so "otherwise constituted" as to imperil any national interest, the statement cannot be reconciled either with the language or the purpose of the treaty.

The final clause of Article III prescribes that:—

"in cases in which the Parties disagree as to whether or not a difference is subject to arbitration under Article I of this Treaty, that question shall be submitted to the Joint High Commission of Inquiry; and *if all or all but one of the members of the Commission* agree and report that such difference is within the scope of Article I, it shall be referred to arbitration in accordance with the provisions of this Treaty."

These words, "all or all but one of the members of the Commission," cannot be applied to a Commission of one or even of two persons. The word "all," used by distinction from the word "one," necessarily implies more than one. And the Commission is the "Joint High Commission." A Commission of one is not a "Joint" Commission.

Not only is the "otherwise constituted" clause of Article II incapable of application to the special case dealt with in Article III, but there can be no intention so to apply it. The case under Article III is a case by itself. It is a familiar rule that special provisions supersede general provisions, if there is inconsistency between them. The purpose is clear that this particular question shall go to the Joint High Commission constituted by the treaty, the only Commission constituted by the treaty, and that a difference shall not be declared arbitrable unless at least two representatives of the objecting power concur with the three of the other power in the decision. This is the only construction that can ensure the automatic and indefeasible operation of this most important clause. The treaty binds each party to appoint members of this Joint Commission of six whenever either party calls for it. It does not bind either party to agree, under any circumstances, to any Commission otherwise constituted.

The majority report invites some general criticism which otherwise might well be spared. The argument is essentially a demonstration against any abridgment of the senatorial privileges. It is not the Constitution, or the national safety, but the curule dignity that is threatened. Equally apparent is an underlying jealousy of the President or the presidential office. Secretary Knox, at Cincinnati, broadly intimated that this senatorial attitude toward the Executive compelled the limiting of the treaties to justiciable claims of right instead of extending the benefits of arbitration to all international disputes. We should hardly expect to find an official document of this importance appearing under examination to be questionable

in motive, mistaken in law, inaccurate in statement, unwarranted in assumption, sophistical in reasoning, and openly hypocritical in its protests of friendship for arbitration while it stabs the treaties in the back, as Joab stabbed his brother Amasa in the act of embracing him. No one would lightly ascribe to these distinguished gentlemen a purpose to deceive the Senate, or the people; but if they believe what they say, they have deceived themselves, and the blunder of a statesman may be as bad as a crime. There is in the report a pervading tone of uncandor, a sense of something covert and undisclosed, of a purpose to eviscerate the treaties for a reason or reasons which are not uncovered unless senatorial prerogative is the only reason. It is a significant feature of the document that, while the United States has led the movement for arbitration, as its foremost advocate among the great nations, the majority of this committee is contending for an unbridled privilege to *prevent* arbitration, and not merely this, but to prevent it against the judgment of the Executive, the first branch of the treaty-making power, in cases to which he would apply it. The whole drift of the argument is to restrict arbitration, and turn the face of the United States against it, on the evident assumption that the less we have of it, the better,—an argument which the people will hardly accept, whatever the attitude of the Senate may be. It does not seem to be thought of, that some time we may be in a situation to invoke arbitration on our own account. There is a plain implication, if the words mean anything, that the United States is somehow or somewhere liable to claims of right by a foreign power or powers which we cannot afford to submit to impartial arbitration, so long as they can be kept in suppression by other means. Partisan politics are supposed to be foreign and unknown to diplomacy or international relations, but there is even a lurking sense of the all-pervading tariff question. Is it possible that the majority see the ghost of protection stalking behind the treaties? Is the open distrust of the President's power in making an agreement, or a Commission, occasioned by fear that some day a president may not be "sound" upon this or other political issues?

It is not an opportune time for the Senate to take its stand upon prerogative to block a movement at which the world is looking on. It cannot but add fuel to the flame of its consuming unpopularity, and put a new and formidable weapon in the hands of those who would reduce the Senate of the Constitution to a little House of Representatives. The most ancient, illustrious, and powerful Senate in

the world died of prerogative two or three months ago. If our Conscript Fathers consult the auspices, they will deal promptly with the wrong-headed obstinacy, the cynical indifference to the moral sentiment of the country, that characterizes this report. As for the people, there are one or two things for them to do. They are already put in a false position before the world, but they can take care of this, and the response to the President's appeal indicates that they will take care of it. Among our ninety-odd millions, but one voice accustomed to speak with authority is heard in dissent, and upon this question the people will hardly go for counsel to a temperamental fighting man. They may conclude that it is now time to let in the light once for all upon the oracular mysteries of "executive session." If this performance had taken place behind closed doors, and if the people had not found out in time the character of the arguments by which it is sought to control the Senate in an act of supreme consequence, the cause of the world's peace might have been set back for a generation and the interests of humanity been sacrificed to the personal importance of half a dozen men. One-third plus one of the senators present in secret session, playing the game of political power if nothing worse, can defeat any treaty. It is ultimately for the people to say whether the greatest cause that now appeals to the enlightened sentiment of the world shall be struck down in the house of its friends, that a jingo Senate may some day be in a position to juggle with the issues of war. This is a crisis in the cause of international arbitration. No one expects that these treaties will bring in the millennium, but, when three of the foremost nations have once actually sealed a compact to arbitrate all justiciable disputes, which the ratification of the treaties will accomplish and the amendment sought by the majority of the committee will prevent and defeat, the final and complete success of the movement is assured. The moral attraction of a scheme that offers even a prospect of immunity from war will draw the other nations into it with compelling force. The United States is to-day, where it has always been and where it belongs, at the head of the movement. To strike at these treaties in their vital part will be notice to the world that the American nation has faced about and stands in the way of any further advance toward a real league of peace. Unless the people are content to be put in that attitude, it is for them to see that the treaties come to no harm.

If a thousandth part of what has been expended in war and preparing its mighty engines had been devoted to the development of reason and the diffusion of Christian principles, nothing would have been known for centuries past of its terrors, its sufferings, its impoverishment, and its demoralization, but what was learned from history.—HORACE MANN.

Were half the power that fills the world with terror,
Were half the wealth bestowed on camps and courts,
Given to redeem the human mind from error,
There were no need of arsenals or forts.—LONGFELLOW.

SYNDICATES FOR WAR.

The intolerable burdens of taxation imposed by the present monstrous armaments of the nations are being everywhere realized, and the naval budgets are being criticised as never before. The people are being shown how much of the increased cost of living is due to these frightful extravagances and wastes, which make the existing armed peace hardly less serious than war itself. They have not been adequately shown how much of this expenditure is due to the systematic and persistent activity of great interests which are selfishly profiting by it. The World Peace Foundation in Boston has just published, under the title of "Syndicates for War," a special pamphlet devoted to the exposure of this ruthless despoiling of the public treasury for private and corporate gain. It is a reprint of some startling London letters to the New York *Evening Post*, revealing a mass of confessed and indisputable facts of the situation in England almost incredible in their grossness. The situation is undoubtedly almost as bad in Germany, France, and the United States; and we know that it is much worse in Russia. It is to be hoped that this pamphlet may be followed by another dealing with similar evils nearer home. But the present pamphlet should prompt our people to some solemn thinking as to the part taken by certain vested interests in keeping up the periodical war-scares that ensure them regular business and immense gains at the public cost. The pamphlet is an amazing revelation of the hidden springs of political measures which saddle inordinate taxes upon the people.

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